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Attorney for the Department of Insurance

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA**

IN THE MATTER OF
THE AMACORE GROUP INC.,

Respondent.

)
)
) CASE NO.: INS-2009-75
)
) **NOTICE OF PROPOSED AGENCY ACTION
AND OPPORTUNITY FOR HEARING**
)
) (ADMINISTRATIVE FINE AND PERMANENT
) CEASE AND DESIST ORDER)

TO: RESPONDENT AMACORE GROUP INC.

PLEASE TAKE NOTICE:

Staff of the Insurance Department of the Office of the State Auditor and Commissioner of Insurance of the state of Montana (Department), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the Commissioner take disciplinary action against the Respondents for violations of the Montana Insurance Code. Specifically, staff is proposing pursuant to Mont. Code Ann. § 33-1-317 that the Commissioner impose a fine not to exceed \$25,000.00 for each violation of the Montana Insurance Code in addition to all other penalties imposed by the laws of Montana.

Additionally, the Department requests that the Temporary Cease and Desist Order filed and served contemporaneously herewith be made permanent, and for violations of Mont. Code

Ann. § 33-38-105, the Department seeks to impose an administrative fine of up to \$25,000.00 for each day of violation.

The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-311, 33-1-314, 33-1-317, 33-1-318, 33-1-1302, 33-38-101, 33-38-103, 33-38-104, and 33-38-105.

ALLEGATIONS OF FACT

1. At all times material hereto, the Amacore Group, Inc. ("Amacore") offered and sold medical care discount cards in the state of Montana.
2. At all times material hereto, Amacore did not hold a certificate of registration as a medical care discount card supplier issued by the Commissioner.
3. Between July 2008 and April 20, 2009, Amacore sold medical care discount cards to and accepted consideration from at least 13 Montana consumers.
4. Nine of the 13 Montana consumers do not even recall purchasing the medical care discount cards.
5. Respondent sold medical care discount cards by obtaining the credit card information of consumers who called to order another product from television ads.
6. The Amacore medical discount cards were sold as an add-on to the consumers' purchase.
7. Consumers who were signed up for the Amacore medical discount card were not given 30 days to cancel their memberships or a list of providers prior to purchase of the card.
8. Respondent's card did not provide coverage or other benefits within the state of Montana.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance ("Commissioner"). Mont. Code Ann. § 2-15-1903.

2. The Montana Insurance Department is under the control and supervision of the Commissioner. Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

3. The Commissioner and Insurance Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.

4. The Commissioner shall administer the Insurance Department to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).

5. A medical care discount card supplier may not market, promote, sell, or distribute a medical care discount card in this state unless the supplier holds a certificate of registration as a supplier issued by the Commissioner. Mont. Code Ann. § 33-38-105(1).

6. "Medical care discount card supplier" means a person engaged in selling or furnishing, either as principal or agent, for consideration, one or more medical care discount cards to another person or persons. Mont. Code Ann. § 33-38-102.

7. "Medical care discount card" means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in § 33-1-201, that purports to grant, for consideration, a discount or access to a discount in a medical care-related purchase from a health care provider. Mont. Code Ann. § 33-38-102.

8. Respondent is a medical discount card supplier who has committed multiple violations of Mont. Code Ann. § 33-38-105(1) by marketing or promoting a medical care discount card in Montana without holding a certificate of registration issued by the Commissioner.

9. A person commits the act of insurance, medical care discount card, or pharmacy discount card fraud, when in the course of offering or selling insurance, a medical discount card, or a pharmacy discount card, the person misrepresents a material fact known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing

another person to rely upon the misrepresentation to that relying person's detriment. Mont. Code Ann. § 33-1-1302.

10. Respondent committed multiple violations of Mont. Code Ann. § 33-1-1302 by representing that the offered products provided coverage or other benefits which were not provided. Respondent made these representations knowing that they were untrue or with reckless indifference as to the truth of the representations with the intention of causing consumers to rely on the misrepresentation to the consumer's detriment.

11. Respondent violated Mont. Code Ann. § 33-38-103(1)(d) by failing to enter into contracts with medical care providers in Montana to provide the discounts represented by the Respondent to be granted to purchasers of the card.

12. Respondent violated Mont. Code Ann. § 33-38-104(1) by failing to give consumers a 30 day right to cancel memberships.

13. Respondent violated Mont. Code Ann. § 33-38-103(1)(c) by failing to provide prospective purchasers or users access to a list of health care providers, including the name, city, state and provider type before purchase of the medical care discount card.

14. Respondent violated Mont. Code Ann. § 33-18-102(1) by engaging in an unfair or deceptive act or practice when it enrolled Montana consumers and withdrew money from their checking accounts without their knowledge.

RELIEF REQUESTED

1. For violating provisions of the Montana Insurance Code, staff of the Department seeks to impose an administrative fine against each Respondent not to exceed \$25,000.00 for each of the violations of the Montana Insurance Code in addition to all other penalties imposed by the laws of Montana. Mont. Code Ann. § 33-1-317.

2. The Department requests that the Temporary Cease and Desist Order, filed and served contemporaneously herewith, be made permanent and that, to the extent that it has not already done so, the Respondent be required to make full restitution to Montana citizens who purchased the Amacore product for all financial losses sustained as a result of medical care discount card fraud together with interest at a rate of 10% per annum from the date of the fraud pursuant to Mont. Code Ann. § 33-1-1302.

3. For violations of Mont. Code Ann. § 33-38-105, the Department seeks to impose an administrative fine not to exceed \$25,000.00 for each day of violation.

STATEMENT OF RIGHTS

You are entitled to a hearing and to respond to this Notice of Proposed Agency Action and to present evidence and arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.*

You have a right to be represented by an attorney at any and all stages of this proceeding. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this notice to Michael Winsor, Attorney for the Department of Insurance, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601. The hearing shall then be held within 45 days of the Commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties. While so advising Mr. Winsor, your written notice must clearly indicate whether you request a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any

other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

Should you request a hearing, you have the right to be accompanied, represented and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the state of Montana, she or he must comply with the Montana State Bar requirements for appearing *pro hac vice* and *Application of American Smelting and Refining, Co.*, 164 Mont. 139, 520 P.2d 103 (1973) and *Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

CONTACT WITH THE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Michael Winsor, Attorney for the Department of Insurance, State Auditor's Office, 840 Helena Ave, Helena, MT, 59601, (406) 444-2040. If you are represented by an attorney, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give written notice of your demand for a formal hearing or for informal procedure within 15 days will result in the entry of a default order imposing any sanctions available under Montana law without any additional notice to you pursuant to Mont. Admin. R. 6.6.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 18 day of March 2010



Michael Winsor
Attorney for the Department of Insurance

CERTIFICATE OF SERVICE

This is to certify that on this 19th day of March, 2010, a copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the Respondent by depositing a copy of the same in the U.S. Mail, certified, return receipt requested, postage prepaid, and addressed to:

The Amacore Group, Inc.
First Floor
4929 West Royal Lane
Irving, TX 75063



State Auditor's Office